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EXTRAORDINARY

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 18th August, 2000.

I

BILL No. XXXIV OF 2000

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2000.

Short title and
commence-
ment.

(2) It shall come into force at once.

2. In clause (4) of article 80 of the Constitution, after the words "single transferable vote" the words "and the voting shall be by open ballot" shall be inserted.

Amendment of
article 80.

STATEMENT OF OBJECTS AND REASONS

The Rajya Sabha has a very important role to play in the Governance of the country. It is unfortunate that lately we have been witnessing the role of Money power in Rajya Sabha elections. It is high time that such things are brought to an end. Any Act, which diminishes the credibility of our democratic institutions, will ultimately harm the democracy in this country.

The matter may be widely discussed before a final decision. In this context it is suggested that an open ballot system should be introduced so far as elections to the Rajya Sabha are concerned. An open ballot system to the Rajya Sabha elections can certainly protect the fundamentals of the democratic system of our country.

Hence this Bill.

SANJAY NIRUPAM

II

BILL NO. XXXV OF 2000

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 2000.

Short title.

2. After article 371 I of the Constitution, the following article shall be inserted, namely:—

Insertion of
new article
371J.

"371J. (1) Notwithstanding anything in this Constitution, the President shall, within six months from the commencement of the Constitution (Amendment) Act, 2000, by an order, provide for the establishment of a Development Board with respect to the North Eastern Region of the country consisting of the States of Assam, Nagaland, Manipur, Tripura, Meghalaya, Mizoram and Arunachal Pradesh.

Special provi-
sion with re-
spect to States
of North-East-
ern region.

3. The Development Board established under clause (1) shall consist of the following as members:—

- (i) the Deputy Chairman of the Planning Commission;
- (ii) the Union Finance Minister;
- (iii) the Union Minister of Railways;

- (iv) the Chief Ministers of the concerned States;
- (v) the Finance Ministers of the concerned States; and
- (vi) Members of Parliament representing the concerned States.

4. The Deputy Chairman of the Planning Commission shall be the Chairman of the Development Board.

5. It shall be the duty of the Development Board to draw up and execute plans, for:—

- (i) providing adequate infrastructure facilities like drinking water, roads, sanitation and communication facilities;
- (ii) development of tribal areas with special attention to basic facilities;
- (iii) generating adequate employment opportunities;
- (iv) special development of hilly and inaccessible areas;
- (v) providing adequate rail transport facilities;
- (vi) providing for generating adequate electricity;
- (vii) improvement and promotion of tourism; and
- (viii) taking such steps as may be incidental or consequential to any of the aforesaid objects.

6. The Union Government shall provide adequate funds for the implementation of the various projects as recommended by the Development Board :

Provided that thirty percent of the cost of projects shall be met by the concerned State Government from out of its funds.

7. The Development Board shall submit an annual report to the President who shall cause the report to be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The area commonly referred as the North Eastern Region comprising “seven sisters” viz. the states of Assam, Nagaland, Manipur, Tripura, Meghalaya, Mizoram and Arunachal Pradesh, is a extremely backward and under-developed hilly region. The Region also consists of many tribal areas and population who have not yet seen the light of civilisation. There are no adequate infrastructure facilities such as roads, power, rail, communication etc. in the absence of which it is not possible to accelerate the growth and development of this Region.

In order to step up the tempo of development of the Region at a faster pace, it is deemed necessary to set up a special agency for the purpose to be known as Development Board comprising of the representatives of the Union and the seven State Governments. A special provision is therefore, proposed to be made in article 371 of the Constitution to achieve this object.

Hence this Bill.

KARNENDU BHATTACHARJEE

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to insert a new article 371J in the Constitution of India to provide for the establishment of a Development Board with respect to the North Eastern Region. Clause 5 of the proposed new article 371J of the Constitution further provides that the Central Government would make available adequate funds for implementation of the various projects of the Development Board. The Bill therefore, if enacted would involve an estimated annual recurring expenditure of about Rupees Four Thousand Crores from the Consolidated Fund of India.

The share of the States to the development projects will be met by the State Governments from the respective Consolidated Funds of the States.

III

BILL NO. XXXVII OF 2000

A Bill to amend the Prevention of Insults to National Honour Act, 1971.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Prevention of Insults to National Honour (Amendment) Act, 2000. Short title.

For section 3 of the Prevention of Insults to National Honour Act, 1971, the following section shall be substituted, namely:— Substitution of Section 3 of Act 69 of 1971.

2. Whoever intentionally prevents the singing of the Indian National Anthem or the Indian National song, as the case may be, or causes disturbance to any assembly engaged in such singing shall be punished with imprisonment for a term which may extend to five years or with fine which may extend to ten thousand rupees or with both. Penalty for prevention of Indian National Anthem or National song.

STATEMENT OF OBJECTS AND REASONS

The founding fathers of the Constitution of India while adopting “Jana Gana Mana” as composed by Gurudev Rabindra Nath Tagore as the National Anthem of India gave an equal status to the song “Vande Mataram” as composed by Shri Bankim Chandra Chatterjee by recognising it as our national song since it played an inspiring role in the struggle for Indian independence.

Whereas the Prevention of Insults to National Honour Act, 1971 provides for punishment to any person who intentionally prevents the singing of the Indian National Anthem or causes disturbance to any assembly engaged in such singing but there is no provision about insults to the National Song. The punishment presently prescribed is also mild.

It will, therefore, be appropriate to provide penalty for the intentional prevention of the singing of the Indian National Anthem or the National Song Vande Mataram or causing disturbance to any assembly engaged in such singing, and to make the penalty stiffer.

The Bill seeks to achieve these objectives.

KARNENDU BHATTACHARJEE

IV

BILL No. XXXVI OF 2000

*A Bill to provide for the establishment of a permanent Bench of the
Guwahati High Court at Silchar*

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Guwahati High Court (Establishment of a Permanent Bench at Silchar) Act, 2000. Short title.

2. There shall be established a permanent Bench of the Guwahati High Court and such Judges of the Court not being less than two in number, as the Chief Justice of the Court may from time to time depute, shall sit at Silchar in order to exercise the jurisdiction and power for the time being vested in the High Court in respect of cases arising in the Barak Valley of Assam. Establishment of a permanent Bench of the Guwahati High Court at Silchar.

STATEMENT OF OBJECTS AND REASONS

The area known as "Barak Valley" is a land locked area which does not have good communications system to facilitate journey to Guwahati which is presently the seat of Guwahati High Court. It will be of benefit to the people of the Northern Assam if a small bench of the Court is set up at Silchar the interest of cheap and speedy justice for the convenience of litigant public.

Hence the Bill.

KARNENDU BATTACHARJEE

V

BILL NO. XLV OF 2000

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2000.

Short title and
commence-
ment.

(2) It shall come into force with immediate effect.

2. In clause (1) of article 29 of the Constitution,

Amendment
of article 29.

(i) after the words “conserve the same” the following shall be inserted, namely:—

“and the State shall protect the life, property, places of worship, holy literature of such section of citizens without any discrimination”.

(ii) the existing clause (2) shall be renumbered as clause (3) and before the clause so renumbered, the following clause shall be inserted, namely:—

(2) Nothing in this article shall prevent the State from imposing compulsory total ban on any fundamentalist organisation which indulges in violence against any religious minority forthwith and confiscate all its properties, both movable and immovable.

STATEMENT OF OBJECTS AND REASONS

In many parts of the country, some fundamentalist organisations are terrorising the religious minorities particularly the christians by attacking them and in many cases killing them, torching their houses, places of worship and holy books. Even the educational institutions belonging to the religious minorities are being attacked and the minorities are living in constant fear and uncertainty. The protection of minorities has, therefore, to be included in the fundamental rights and duty has to be imposed on the State for their protection. The State should also ban the organisations and confiscate their properties which indulge in violence against the minorities. If this provision is included as fundamental right, the minorities may also approach the Courts of law for their protection and also seek ban on fundamentalist organisations.

Hence this Bill.

SURESH PACHOURI

VI

BILL No. XLII OF 2000

A Bill to provide reservation in services in all the Departments and establishments of the Central Government, statutory authorities, autonomous bodies constituted under the central Acts, Company, Corporation, Public Sector Banks, Private Sector Undertakings, Cooperative Societies, Universities and affiliated/recognised schools, colleges etc. receiving grant in aid etc., from Central Govt./State Govt./Local Body/ Public Undertaking or Private Sector etc. for the citizens of the Scheduled Castes and Scheduled Tribes and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Scheduled Castes and Scheduled Tribes (Reservation in Services) Act, 2000.

(2) It extends to the whole of India.

Short title,
extent
Commence-
ment, and
application.

(3) It shall come into force at once.

(a) This Act is in addition to the provisions relating to reservation in the recruitment/promotion/upgradation in accordance with the rules issued under proviso to Article 309 of the Constitution and shall remain to be in operation to the extent not inconsistent with the provisions of this Act.

(4) It shall apply to every establishment defined in this Act/department of the Union of India or under its control and receiving/received grant/aid/subsidies/concessions/loans from Govt. of India/ Public Sector Bank/Financial Institution Controlled or Managed by Govt./Private Sector throughout the territory of India.

Definitions.

2. In this Act, unless the context otherwise requires—

(a) "establishment" includes the Government of India, the Parliament of India, C.A.G., Election Commission, U.P.S.C. all local bodies or other authorities within the territory of India and under the control of the Govt., of India/Public Sector Banks, Public Sector Undertakings, Statutory Authorities, Autonomous Body or Authority constituted under a Central Act, registered or deemed to have been registered under the Companies Act, Corporation, Cooperative Societies, Universities, established by Central/State Acts or established by Central Acts and affiliated or recognised educational institutions receiving grant in aid from Govt. of India, Private Sector person, partnership firm registered under Indian Partnership Act, a Company registered under Companies Act, 1956 as amended from time to time, a Trust registered under Indian Trusts Act and/or Co-operative Societies registered under the Co-operative Societies Act, State Act/Central Act or deemed to have been registered under that Act and receiving/received loan or grant in lump sum, financial assistance or concessions from Govt. of India or any Nationalised Bank/Financial Corporation managed or controlled by Govt. of India, constituted or body corporate under Central Act or maintained by or with the help of the Govt. of India, or Govt. of India has share capital in an establishment.

(b) "notification" means a notification issued under the Act and published in the Official Gazette of India.

(c) "prescribed Authority" mean and include D.O.P.T. or Secretary to the Union of India or any other Department, Nodal Ministry or Head of the Department or appointing authority in the establishment, or as may be specified in the appropriate Rules, regulation or instructions applicable to the establishment.

(d) "prescribed" means prescribed by rules made by the Govt. of India under this Act or are in force but not inconsistent with the Act or Rules.

(e) "recruitment year" means the English calendar year during which a recruitment is made and shall include part of an year preceding the recruitment, if recruitment is made more than once within a year as per the procedure or as defined in the relevant recruitment rules or regulations/Act as rules made under proviso to Article 309 of the Constitution and applied to that establishment.

(f) "rules" means Rules made under this Act and instructions/directions/orders issued under this Act or of those existing but not inconsistent with this Act and Rules.

(g) "Scheduled Castes" and "Scheduled Tribes" shall have the same meanings assigned to them respectively under clause (24) and clause (25) of Art. 366 of the Constitution of India and notified by the President of India under Art. 341 (1) and 342(1) as amended by the Scheduled Castes and Scheduled Tribes List Amendment Act, 1976 under Act. 341(2) and 342 (2) of the Constitution.

(h) "service" means any service or post of classes of posts or office, appointed for remuneration for a continuous period of not less than ninety (90) days in a year in connection with the affairs of the establishment.

CHAPTER II

RESERVATION OF POSTS/OFFICE/SERVICE ETC. IN THE ESTABLISHMENT

3. (1) There shall be reservation in every establishment for the Scheduled Castes and the Scheduled Tribes in all posts/classes of posts in the services/offices and in all cadres/grades/categories including single posts of a service, at all levels of recruitment for appointment or promotion/upgradation elevation, except those exempted from the purview of the Act with prior approval of both the Houses of Parliament as Certified by the Speaker of the Lok Sabha and Chairman of the Rajya Sabha of such approval and their Certificates shall be conclusive proof of such approval of the respective Houses.

Reservation
and
percentage
thereof.

(2) It shall be the duty of the every State Government to incorporate similar provisions as a condition to grant loan/concession/subsidy, share capital to any Private Sector, Person, Firm, Trust, Industry/Organisation within the territory to the state specified in the first schedule of the Constitution.

(3) The office/post or classes of posts in connection with the services of the establishment so reserved, shall not be filled by any other candidate other than the Scheduled Castes/Scheduled Tribes candidates respectively, except where otherwise expressly provided by or under this Act.

4. Notwithstanding anything in any Judgement/Decree/Direction/Order of a Court/Tribunal or authority to the contrary, every establishment shall adopt such procedure as is just to secure the results in implementation of the reservation to the Scheduled Castes and the Scheduled Tribes in all services and posts, classes of posts in the services, in cadre, grade, category, in direct recruitment, promotion/upgradation, upgradation or appointment by transfer.

Procedure to
secure results.

5. The reservation of posts/classes of posts in the services for Scheduled Castes and Scheduled Tribes covered by sub-section (1) shall be at such percentage of population of the latest census, as the Union of India may from time to time prescribe, but in any case it shall not be less than fifteen per cent for the Scheduled Castes and seven and a half per cent for the Scheduled Tribes respectively or at such higher percentage as is applicable to the concerned establishment in case the recruitment/promotion/ upgradation is made on local/regional basis. The census, for the purposes of this Act, will be treated complete if it had covered more than 70% of the total population of the country, irrespective of the fact that it remained incomplete in one or more states wholly or partially for any reason whatsoever.

Reservation to
be based on
population of
the latest
census.

6. Notwithstanding any incompleteness of census in any part of the territory of India, the Union of India shall take into account the latest preceding census of that part of the country that had publicized in accordance with the procedure for its publication, so as to give effect the increase in the percentage of reservation within 3 months of the completion of census within the meaning of above sub-section (2).

Incompletion
of census in
any part not
to affect
reservation.

7. Notwithstanding anything in any law, judgement/decree/order/direction to the contrary, a Scheduled Castes/Scheduled Tribes candidate selected on merit is not barred to avail the benefit of relaxed evaluation or concession for consideration at a later stage to the reserved posts. He also, if, found eligible later on his merit with general candidate for further promotion/upgradation, previous availment of relaxed standard or concession is not a bar for consideration of such a candidate.

Procedure
with regard to
candidates
selected on
merit.

8. Notwithstanding anything in any law, Judgement/decree/order/direction of a Court/Tribunal or authority to the contrary, the Scheduled Castes or the Scheduled Tribes candidate, selected on merit in a direct recruitment/promotion/upgradation/upgradation or appointment by transfer, shall have his *inter se* seniority on such post with general category candidate. However, he is eligible for future consideration for reserved posts; and to the rights of reservation under this Act.

Inter se
seniority.

Roster to be
treated as
seniority.

9. Notwithstanding anything to the contrary in any law, judgement, decree, order, or direction or court/ tribunal or authority, and notwithstanding any *inter se* merit prepared by the Public Service Commission, recruitment authority/board/competent person, separately between general and reserved category candidates, the Scheduled Castes/ Scheduled Tribes candidate appointed/promoted to a reserved post shall get his seniority, from the date of such appointment/promotion/upgradation and adjusted in the service as per the roster maintained in the concerned establishment/deptt./cadre/service/or office at each stage of appointment/promotion/upgradation irrespective of the roster points occupied in the immediate lower cadre/post as the case may be. The roster shall be treated as seniority for general as well as reserved candidate.

Reserved posts
not to be filled
by general
candidates.

10. Post reserved for the Scheduled Castes and the Scheduled Tribes under subsection (1) of Section 3 shall be filled in such manner as may be prescribed with the reserved candidate only and shall not be filled up by general category candidate, even in the absence of reserved category candidate not selected/not available.

Vacancies not
to be
dereserved.

11. The unfilled reserved posts or class of posts/vacancies for whatever cause may be, shall not be dereserved and shall be carried forward from time to time.

Special
recruitment
drive to fill
reserved
vacancies.

12. Notwithstanding anything in any judgement/Decree/Order or Direction of a Court/ Tribunal or authority to the contrary, the Union of India or the establishment shall fill up such backlog posts or class of posts/vacancies by Special Recruitment Drive for recruitment/ promotion/upgradation without clubbing the current vacant post(s) or vacancy(ies). The prohibition of not to reserved in a recruitment year more than 50% of the posts/class of posts/vacancies in a cadre/grade/service shall have no bearing to such Special Recruitment Drive/Promotion/upgradation along with general Recruitment or otherwise.

Exchange of
reserved
vacancies.

13. If the required number of candidates from the Scheduled Castes/Scheduled Tribes are not selected or not available to fill up the respective reserved post/class of post/vacancy, the same shall be filled up by the other reserved category candidates belonging to Scheduled Castes/Scheduled Tribes, as the case may be.

Maintenance
of percentage
reservation.

14. However, in a subsequent recruitment, if a reserved candidate from the other category so selected, shall be appointed and adjusted in the quota reserved for the other category. Thus the balance of the prescribed percentage of reservation shall always be maintained.

Head of
Establishment
to implement
Act.

15. The Head of the establishment/department/organisation and if the appointing authority is higher in rank than the Head of the Establishment, the appointing authority shall be the responsible to implement this Act in letter and spirit.

Savings.

16. This Act is in addition to the Law or Rules made under proviso to Article 309 of the Constitution or the instructions having force of law prescribing qualification, method of recruitment/ selection for appointment/promotion/upgradation/appointment by transfer, regulate probation and all other conditions of service but not inconsistent with this Act or the Rules made under this Act.

Seniority to
base on
existing roster.

17. Notwithstanding anything in any other Law, Judgement, Decree, Order, Direction of a Court/ Tribunal or authority to the contrary, the seniority of a person belonging to the Scheduled Castes/ Scheduled Tribes appointed, on direct recruitment/promotion/ upgradation or on transfer to a reserved post on regular basis in accordance with the prescribed procedure, shall be counted from the date of his appointment/promotion/ upgradation in each cadre/grade/service/category. His placement of seniority will be as per the existing roster in the promoted cadre/grade/service/category. The roster point occupied in the lower grade, cadre, service or category shall have no relevance irrespective of the later promotion/upgradation of his erstwhile senior general category person.

Relaxation and
Concessions.

4. (1) The Union of India/Competent Authority of the establishment shall be responsible for the following:—

(i) relaxation of the upper age limit fixed for appointment to a service by such number of years as may be prescribed under the Rules made under this Act, but not less than five years. However, till then the rules, instructions or regulation in force/operation not inconsistent with this Act, shall remain in operation. However, relaxation of five years shall remain in force till then.

(ii) exemption of the fee fixed for applying for selection to a service/post/office separately or combindly, through an examination or otherwise to such extent as may be prescribed. Till then the existing rules or instructions shall remain in operation.

(iii) Notwithstanding any Law, Judgement/Decree/Order/Direction of Court, Tribunal or Authority to the contrary, the Union of India, the instrumentality or the concerned establishment, shall have power and shall always be deemed to have power to make provision for relaxation, prescribed lower qualifying marks or lessor standards of evaluation, other qualifications or relax previous experience for direct recruitment/promotion/upgradation for the Scheduled Castes and the Scheduled Tribes, to secure their full representation as per prescribed percentage in Section 3(2) in all services/ offices/cadres/categories/grades. Instructions, relaxation and concessions prescribed by the Union of India prior to 16.11.1992 i.e. judgement in Inder Sawheny versus Union of India 1992 Supple. 3 SCC 217 case shall remain in force to the extent not inconsistent with this Act, unless new rules or instructions consistent with this Act are issued in the meanwhile. Withdrawal of any relaxation/concession, made after the said date shall have no legal effect.

(2) The recruiting authority/competent officer may pay to the candidate belonging to the Scheduled Castes or the Scheduled Tribes called for interview, such travelling allowance, as may be determined by prescribed authority. Till the Rules under the Act are made, the existing Rules or instructions in that behalf shall remain in operation.

5. (1) Notwithstanding anything in any law, Judgement, Decree, Order or Direction of Court, Tribunal or Authority to the contrary, single posts carrying equal scale of pay or responsibility and duty in the Deptt. or establishment, shall be clubbed and provide reservation to the Scheduled Castes and Scheduled Tribes for appointment/promotion/upgradation, in those posts in accordance with this Act and rules. Instructions or directions by whatever name called but not inconsistent with the Act in force shall remain in operation.

Clubbing of single post.

(2) Roster shall be applied for other single post in an establishment and if Scheduled Caste/Scheduled Tribe candidate at the roster point at the time of vacancy arising, available, such vacancy at the roster point, shall be considered and if Scheduled Caste/Scheduled Tribe candidate found selected, may be appointed or otherwise be carried forward till succeeding vacancy arises.

6. (1) Notwithstanding anything contained in any Judgement, Decree, Order or Direction of a Court, Tribunal or Authority, to the contrary, respective roster points earmarked for Scheduled Castes and Scheduled Tribes in—40 points or 100 points roster as the case may be or any other points roster, the same shall remain in operation even after the date of the Judgement of the Supreme Court of India in R.K. Sabarwal versus State of Punjab (1995)2 SCC 745 i.e. 10th February, 1995, the Scheduled Castes or Scheduled Tribes candidates, on appointment or promotion/upgradation, shall be placed in the roster points specified thereon for them according to the order of merit among themselves, respectively. Every Scheduled Caste or Scheduled Tribe employee holds a lien on the post till he is duly promoted and became a member in the higher service. Irrespective of the respective merit list *inter se* between general category employees and reserved category employees prepared by the Public Service Commission/Selection Committee Authority, the *inter se* seniority between the general and reserved category candidates shall be as is maintained in the roster operating in the particular cadre/ grade/category/service.

Roster and its operation.

(2) Notwithstanding anything in any Judgement, Decree, Order or Direction of Court, Tribunal or Authority to the contrary, on appointment by promotion/upgradation to a higher post in a cadre/grade/service/category on regular basis according to rules, the Scheduled Caste or Scheduled Tribes promotee shall be fixed in the appropriate roster point earmarked for the respective reserved category. The seniority of such a promotee shall be according to the roster in the promoted cadre/ grade or service. The roster in the lower cadre/grade service shall cease to have application from the date of promotion/upgradation on regular basis.

(3) Notwithstanding anything in any Judgement, Decree, Order or Direction of Court, Tribunal or Authority to the contrary, the general category senior employee in lower cadre/grade/service, on promotion/upgradation to the next higher cadre/grade/service, does not gain seniority over the earlier promoted junior reserved category employee. The *inter se* seniority between reserved and general category employees is from the respective dates of promotion/upgradation, irrespective of seniority/ juniority position had in the lower cadre/grade/service/category.

CHAPTER III

MISCELLANEOUS

Protection of the action taken in good faith.

7. No suit, prosecution or other legal proceedings shall lie against any establishment or other person responsible for implementation and application of the Act or anything which in good faith done in pursuance of this Act or rules or order made thereunder or applicable in respect thereto.

Nomination of liaison officer.

8. Every establishment/Deptt./Appointing Authority/Head of the Deptt. shall nominate one or more officers of such rank or ranks as may be prescribed to act as liaison officers. Officers from among the Scheduled Castes and Scheduled Tribes, if available, as far as possible, may be nominated for enforcement of this Act, who shall, in particular, be responsible for:—

(a) Coordination and due and strict implementation of the provisions of this Act and rules made or any other instructions or directions issued by the Union of India thereunder, in their true spirit and purpose and to achieve its object.

(b) Submission of the report and returns to the Union of India within the prescribed period.

(c) Conduct annual inspection of the records of the establishment etc. in such manner as may be prescribed.

(d) Doing such other incidental work or act, as may be necessary, for the above purposes.

Submission of annual report & maintenance thereof.

9. (1) Every establishment etc. shall maintain such records as may be prescribed and shall furnish every year to the Union of India in such manner and at such time as may be prescribed, an annual report on appointments and promotion/upgradation of Scheduled Castes and of other Scheduled Tribes personnel made by it during the previous year; number records and of unfilled posts/vacancies and the steps taken to fill up the inspection posts/vacancies and reasons for not filling them up.

(2) An officer authorised by the Union of India in this behalf not below the rank of Director in the Nodal Ministry of the Union of India may inspect any records or documents maintained in the establishment of the recruitment, appointment and promotion/upgradation of Scheduled Castes and Scheduled Tribes in an establishment etc. As far as possible, if an officer of that rank/status belonging to Scheduled Caste and Scheduled Tribe is available, he may be authorised for inspection and reporting.

(3) It shall be the duty of the Head of the establishment etc. to make available such records or documents for inspection by the authorised officer under sub-section (2) and furnish such information or extend and arrange such assistance, as may be necessary, for him to carry out his functions under this Act.

10. (1) Whosoever responsible for implementation of the contravenes the provisions of the Act, shall be punishable with imprisonment which may extend upto-six months or fine of not less than rupees ten thousand or both. The fine shall be recoverable from personal pay of such officer:

Penalty for contravention of this Act and false claims or issue of false social status certificate.

Provided that nothing in this section shall render any person liable to punishment, if he proves that he had made very bonafide and sincere endeavour or exercised utmost care attention diligence and devotion to implement the provisions of the Act/Rules/Orders/ Directions issued under the Act or in force but not inconsistent with the Act and Rules.

(2) Any person claiming to be of the Scheduled Castes/Scheduled Tribes, applies for recruitment/seek promotion/upgradation shall file an affidavit duly attested by a gazetted officer of State Govt. or Govt. of India or a judicial Magistrate First Class and above rank as per the instruction of the Union of India as prescribed in the schedule to the Act that he by birth belongs to the Scheduled Caste/ Scheduled Tribe and continues to be the Scheduled Caste/Scheduled Tribe. In case he had already obtained a social status certificate from a competent officer/authority in the prescribed format that he belongs to the Scheduled Castes/Scheduled Tribes, the original certificate shall be produced at the time of selection and the certified/zerox copy may be filed along with the application for recruitment/ selection etc.

(3) As soon as after making the appointment to a post/office/service of a reserved candidate, the appointing authority shall immediately send the affidavit and the original social status certificate and application for recruitment/promotion/upgradation etc. to the Director of Social/Tribal Welfare Deptt. for verification and prompt reporting to the establishment etc.

(4) On receipt of the record as provided in section (3), above from the establishment, the Director, Social Welfare/Tribal Welfare Department himself or by his authorised officer shall verify or cause verification of the correctness of the social status of the candidate and shall report back within three months from the date of the receipt of the record to the appointing authority/Head of the Deptt. of the establishment, of the Correctness or otherwise of the social status of the appointed concerned reserved category person.

(5) In case the report is adverse to the appointee, the appointing authority shall immediately issue a show cause notice to the appointee together with a copy of the report received from the Director, Social Welfare/Tribal Welfare Department of the concerned State Govt. calling for an explanation within a specified time; on receipt of the explanation, if any, within the specified or extended time, it shall take appropriate action within a period one month as per the rules or in accordance with the principles of natural justice and pass appropriate brief reasoned orders as the case may be. If the appointee seeks oral hearing in person, the opportunity may be given. The order shall be served in person on the appointee/in case of avoidance to receive it, send it by registered post with acknowledgement due to the last known address. A copy thereof be sent to the Director Social Welfare/Tribal Department, of the State Government.

(6) An appeal shall lie against the order passed u/s 9(5) to the Head of the Department. If the impugned order was passed by a Head of the Deptt., if it is the appointing authority, to the immediate higher authority who shall, after giving an opportunity of hearing in person to an aggrieved employee, decide the same within three months from the date of filing of the appeal; the decision shall be final and is binding on the appointee and shall not be questioned in any court of law. The same shall be served on the employee either or person or by registered post with acknowledgement due. In case the decision is in his favour, the same may be communicated to the Director of Social Welfare/Tribal Welfare Department who on its receipt may question the same under Art. 226 of the Constitution.

(7) Whomsoever knowingly makes a false claim that he is a citizen of Scheduled Caste/Scheduled Tribe and whosoever charged with the responsibility of issuing a certificate/ attesting an affidavit knowingly issues a false social status certificate or attests an affidavit,

proved that the person is not a member of the Scheduled Castes/Scheduled Tribes, shall be punishable with imprisonment of not less than three years and fine which may extend to rupees twenty thousand or both. The concerned officer may be convicted and sentenced to pay a fine upto rupees ten thousand.

(8) The conviction under sub-section (7) of this section shall be disqualification for any future appointment in any establishment etc under the Central Government or State Government and the accused shall not be eligible to contest any elective post, like Member of the Parliament, the State Legislature, Local Bodies, Nagar Palika, Gram Panchayat, etc.:

Representation of People Act or Local Bodies Acts shall be deemed to have been suitably amended and incorporated the disqualification in sec. 10 (7) as disqualification therein.

Cognizance of the offence by courts.

11. (1) No prosecution for any offence under this Act shall be maintainable against an officer except by, or with the sanction of the competent officer with prior approval of the National Commission for Scheduled Castes and Scheduled Tribes constituted under Article 338 of the Constitution of India who shall the authority to examine whether the conclusion of prima facie violation of the Act is proved from record. The competent officer shall ordinarily accept such recommendation unless it further consults the Commission and had revised its recommendation.

(2) No court shall take cognizance of an offence punishable under Section (10) save on a complaint by the aggrieved person or competent police officer or other officer, except as provided under sub-section (1).

(3) No court, inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence punishable under this Act.

(4) The offence under the Act is cognizable and non-bailable.

Cognizance & non-bailable. Saving of existing directions etc., issued by the Central Government.

12. All instructions, directions and orders issued by the prescribed authority relating to the reservation of posts/classes of posts or vacancies in services etc. including relaxation, concessions and safeguards for the Scheduled Castes and the Scheduled Tribes existing immediately before the Inder sawheny versus Union of India 1992, Supplement 3 SCC 217 of the Supreme Court and in respect of which there is no express provision in this Act, in so far as they are not consistent with the provision of this Act, shall continue to be in force, unless withdrawn or superseded in the meanwhile with prior approval of both the Houses of the Parliament.

Power of Central Govt. to give directions.

13. Every establishment etc. shall be bound by the Act, Rules or such existing Rules, direction/ instructions by whatever name may be called not contrary to or inconsistent with the provisions of the Act or as the Central Government of India may by general or special order, give in writing from time to time to give effect to the provisions of this Act.

Act to have over-riding effect.

14. Notwithstanding anything inconsistent therewith contained in any other law, order, judgement or decree of any court, tribunal or authority for the time being in force the provisions of this act shall have effect in addition to and not in derogation of or any instrument/instruction having effect by virtue of any law, other than this Act.

Removal of difficulties.

15. (1) If any difficulty arises in giving effect to the provisions of this Act, the Union of India may by order published in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty.

(2) Every rule, instruction/direction/order made under this Act shall, as soon as may be, after it is so made, be laid before each House of Parliament and obtain prior approval of both the Houses of the Parliament.

16. The Government of India shall in every two years, lay before each house of Parliament, a report giving full account of the implementation of the Act during the preceding years.

Laying
Annual Report.

17. (1) Notwithstanding the operation of the provisions in sections 3 and 4 per force, to give proper and full effect to the Act, the Union of India, may, by notification, make rules to carry out the provisions of this Act.

Power to make
rules.

(2) In particular, and without prejudice to the generality of the fore-going, such provisions may provide for all or any of the following matters, namely:—

(a) the percentages of posts to be reserved in services for the members of the Scheduled Castes and the Scheduled Tribes under sub-section 2(a) of Section 3 and not less than 15% and 7½% respectively;

(b) the manner of filling the posts reserved for the Scheduled Castes and Scheduled Tribes under sub-sections (11) and (12) of Section 3;

(c) relaxation of upper age limit etc. under clause (1) of sub-section (1) of Section 4;

(d) exemption of fee for applying to the recruitment to a service under clause (ii) of sub-section (1) of Section 4;

(e) the authority to determine the travelling allowances under sub-section (2) of section 4;

(f) rank of officer to be nominated as liaison officer under section 8;

(g) the prescribed authority u/s 4(1) (iii);

(h) the manner of conducting annual inspection of records under clause (c) of section 8;

(i) the records to be maintained by an establishment etc. under sub-section (1) of section 9 and the manner in which and the time at which an annual report on the appointments etc. of Scheduled Castes and Scheduled Tribes made during the previous year to be furnished under that sub-section;

(j) the authority to sanction prosecution under sub-section (1) of Section 11;

(k) any other matter, which is required to be, or may be, prescribed;

(l) form of affidavit of the candidate, officer, non-official to counter sign/ attestation under section 3;

(m) procedure for enquiry by the appointing authority and appellate authority;

(n) such other rules or orders or direction to carry out the provisions of this Act.

(3) Every rule made under this Act or instructions/directions shall be laid, as soon as may be, after it is made, before each Houses of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both houses agree in making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be. So, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under this rule.

SCHEDULE

AFFIDAVIT

I _____
 _____ S/D/o _____
 _____ of Village/Town _____
 _____ within the jurisdiction of _____
 _____ Police Station in _____
 _____ Taluk/Mandal _____ in the
 District/Division _____ of the State/Union
 Territory _____ belong to _____
 _____ Community/Caste/Tribe by birth and continues to be a
 Scheduled Caste/Tribe which is recognised in item No. _____
 _____ as Scheduled Caste/Scheduled Tribe under the Constitution (Scheduled
 Caste/Scheduled Tribe) Order, 1950 or as amended from time to time by the Scheduled
 Caste/Scheduled Tribe List Modification Order, 1956, the Bombay Reorganisation Act,
 1960, The Punjab Reorganisation Act, 1966, The State of Himachal Pradesh Act, 1970,
 The North-Eastern Areas (Reorganisation), 1971 and the Scheduled Caste/ Scheduled
 Tribe Order Amendment Act, 1976 of the Scheduled Caste/Scheduled Tribe Amendment
 Order _____. I _____
 _____ S/D/o _____
 further state that myself and my parents ordinarily/normally reside in the said Village/
 Town and within the jurisdiction of _____ Police Station in _____
 _____ Taluk/Mandal _____ in the District/Division
 _____ of the State/Union Territory. I further solemnly verify and
 state that the facts stated above are true and correct to the best of my knowledge and belief
 and no part of statement is incorrect and false.

Signature

Attested by Gazetted Officer:

Note : In case the candidate is son/daughter of a migrant labour/transferee, it should
 further be stated in the affidavit of the date of migration/transfer and the duration
 of stay in the migrated/transferred State in which the Caste/Tribe was not recognised
 as Scheduled Caste/Scheduled Tribe.

The following are eligible to attest the affidavit:

- (1) District Magistrate/Additional District Magistrate/Collector, Deputy Commissioner/
 Additional Deputy Commissioner/Deputy Collector/1st Class Stipendary Magistrate/
 Sub-Divisional Magistrate/Taluka Magistrate/Executive Magistrate/Extra
 Assistant Commissioner.
- (2) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency
 Magistrate.
- (3) Revenue Officer not below the rank of Tehsildar and
- (4) Sub-Divisional Officer/Mandal, Revenue/Development Officer of the area where
 the candidate and/or his family normally resides.

Signed by

STATEMENT OF OBJECTS AND REASONS

The preamble of the Constitution assures social and economic justice, equality of status and of opportunity to every citizen and Article 38 imposes duty on the state to strive to promote welfare of the people by securing and protecting effective social order in which social and economic justice shall inform all the institutions of the national life in particular strive to and endeavor to eliminate inequalities in status, facilities and opportunities among individuals and the groups of people of India and every opportunity to the Scheduled Castes and Scheduled Tribes should be provided to remove social inequality and economic empowerment given to secure equality of status and dignity of individual.

Article 46 enjoins the State to promote with special care, economic interest, in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice.

Art. 335 mandates that the claims of Scheduled Castes and Scheduled Tribes shall be taken into consideration consistently with efficiency of administration in the making of appointment to services and posts in connection with the affairs of the Union and the State.

Even after fifty three years of independence the Scheduled Castes and the Scheduled Tribes do not have proper representation in all the services under the State except class IV or class III services for variegated reasons. While Article 335 assures and given right to the Scheduled Castes and Scheduled Tribes for being considered fastens fundamental duty on the State to secure adequate representation to them in all services and posts in all cadres, grades/categories of services under the State, the Supreme Court has by its Judgements, cut down its width.

In recent judgements of the Supreme Court of India in *Indrasawhni Versus Union of India* opined that reservation in specialised posts in engineering, medical, military etc. shall not be made.

In *Ajit Singh-II* case the Supreme Court held that the Scheduled Castes and Scheduled Tribes promoted to reserved quota posts shall not be entitled to seniority from the date of promotion till the erstwhile senior general candidates are promoted and the later catch up the former and gain seniority over him, depriving the Scheduled Castes and Scheduled Tribes officers seniority from the date of regular promotion as per service rules with attended benefits and denied lien on the post held by them. It was also held that the Scheduled Castes and Scheduled Tribes promotees have no fundamental right to promotion though Article 16(4A) guarantees such right while declaring the general candidates have that right to promotion as fundamental right impeding the phase of providing proper representation to Scheduled Castes and Scheduled Tribes in all services and posts under the State. It was also held that the roster points in the lower cadre of the reserved candidates on promotion should not be delinked in *Narishman* case and *Telecommunication* case, the Supreme Court opined that reservation in single post is violative of Article 14 of the Constitution.

In *Ajit Singh-II* case the Supreme Court had held that the facilities and opportunities in relaxed standards for consideration of the claims of the reserve candidates for appointment or promotion to a service or a post is illegal and the Department of Personnel purported implementation of the above judgements of the Supreme Court issued various orders nullifying the effective implementation of the reservation in the letter and spirit of the Constitutional mandate.

It has been the policy of the Government of India that reservation in services/posts under the Union of India etc. is one of the policies to provide equality of opportunity and of status, economic and social justice to the Scheduled Caste and Scheduled Tribes and the aforesaid judgements defeat the object of the Constitution and the policy of the State in securing proper and adequate representation to the Scheduled Castes and Scheduled Tribes in various posts/offices/services in an establishment etc. defined under the Act.

After adopting liberal economy and private investment in Public Sector Undertaking, it has become corresponding necessity to provide opportunity of employment to the Scheduled Castes and the Scheduled Tribes in the services/posts in the establishment covered by the Act.

With a view to remove the injustice being meted out to the Scheduled Caste and the Scheduled Tribes in implementation and enforcement of the policy of reservation in service etc. under the State, etc. this Bill is being proposed for being enacted.

R. S. GAVAI

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 22 of the Bill provides that the Central Government may make rules for carrying out the purposes of this Act. The rules will relate to matters of detail only.

The delegation of legislative power is therefore of normal character.

VII

BILL No. XLIII OF 2000

A Bill to provide for reservation for admission in all courses of study, higher, technical, professional, higher learning faculties etc. in all the educational institutions in the country to give effect to the preamble, Articles 15, 29(2), 46, 38 and 39, 51A(j) of the Constitution of India and all other provisions incidental thereto.

BE it enacted by Parliament in the Fifty First Year of the Republic of India as follows:—

CHAPTER-I

Short title,
extent, com-
mencement
and applica-
tion.

1. (1) This Act may be called the Scheduled Castes and Scheduled Tribes (Reservation for admission in all courses of study and faculties in all the Educational Institutions) Act, 2000.

(2) It extends to the whole of India.

(3) It shall come into force at once.

(4) It shall apply to every educational institution maintained by the State which includes Local bodies or instrumentalities of the State, receiving grant-in-aid from the Union of India, a State Government, Local bodies and instrumentalities of the State, recognised by the appropriate Government or an officer authorised in that behalf, minority (religious or linguistic) educational institution; University established by Central/State Act or deemed university, Post Graduate Centres and affiliated educational institution bound by any Act, Rules or instructions or orders in force issued under an Act or by the appropriate State government or an officer or authority but not inconsistent with the Act.

2. In this Act, unless the context otherwise requires,—

Definitions.

(g) “academic Year” means an academic year as defined in the relevant Act, rules, education code or Grants-in-Aid code or instructions or directions issued by the Government of India or the concerned State Government or Union Territory, Municipality, Nagar Palika, Municipal Corporation, Nagar Mahapalika, Zilla Parishad or Panchayat Samithi or any statutory authority.

(c) “education” include medical education, engineering, technical education, technology, scientific-speciality, super-specialities, higher or university education or vocational, post-graduation, Ph.D or technical training, all professional courses, law, instruction, strengthening of the powers of body or mind of a student, or culture, etc. in any faculty of the educational institution.

(b) “educational Institution” include every school or college, of all descriptions or categories primary to post-graduate Centre, University, deemed university, research institution, scientific or technical or technological institution, establishment or organisation, teaching or imparting courses of study in general humanities, professional courses, technical courses of study, technology, research, higher learning, or instructions for mental, moral, cultural or physical development, moral, or intellectual excellence, or for higher studies, vocational, teaching, professional courses in Arts, Commerce, Law, Genetics, Farming, Animal Husbandry, Medicine, Engineering, Technology, Post-graduation, Ph.D, Post Graduation, Specialities, Super-specialities in medicine, science, para-medical science, engineering, technology, genetics, dairy farming veterinary science or any other subject or subjects, advanced technological pursuits, professional courses of all categories, or any course of study offered in an educational institution to the general category candidates in that particular subject or course of study, faculty or teaching or instructions in the academic year established under or/and in pursuance of an Act of the Parliament or of a State Legislature or a company or autonomous body registered under the Companies Act, 1956 as amended from time to time, or a cooperative society registered or deemed to have been registered under the appropriate Cooperative Societies Act in force in the concerned State or Union Territory for short ‘U.T.’ or the Societies Registration Act or any other Act as amended to the respective acts from time to time, minority (religious or linguistic) educational institution covered by Article 30(1) of the Constitution of India, any educational institution by whatever name called recognised by the Government of India or the concerned State Government or Union Territory or officer duly authorised by it in this behalf by appropriate Government and received or receiving grant-in-aid from the Government of India, the appropriate State Government or Union Territory/local body or instrumentality covered by Article 12 of the Constitution of India.

(e) “notification” means an order/notification issued by the Government of India, rules, instructions, or orders in force, issued by the Government of India or the concerned State Government or Union Territory, as the case may be, not inconsistent with the Act or Rules and published in the Gazette of India.

(f) “prescribed” means prescribed by rules made under this Act by the Government of India, rules, instructions, or orders in force, issued by the Government of

India or the appropriate State government or Union Territory, as the case may be, not consistent with the Act or Rules.

(i) "rules" means rules, instructions or directions made under the Act and published in the Gazette of India and instructions or directions or orders whether statutory or not in force before the Act came into force, issued under the appropriate Act or executive instructions by the Government of India/ appropriate State Government, Union Territory or local body/authority not inconsistent with the Act and Rules.

(h) "Scheduled Castes" and "Scheduled Tribes" shall have the same meanings assigned to them, respectively in Clause 24 and Clause 25 of Article 366 of the Constitution and notified by the President of India under Article 341 (1) or 342 (1) as amended by the Article 341(2) or 342(2) by the Act of Parliament.

(a) "State" include the Union of India/all the State Governments and the Union Territories, specified in the First Schedule to the Constitution of India as amended from time to time or any local body, authority or instrumentality under Article 12 of the constitution of India. Local authorities, Municipalities, Nagar Palikas, Municipal Corporations, Nagar Mahapalikas, Zilla Parishads, Panchayat Samithis, Gram Panchayat and the alike and all instrumentalities of the State or other authorities by whatever name called.

CHAPTER-II

RESERVATION OF SEATS IN ALL FACULTIES/COURSES OF STUDY IN ALL EDUCATIONAL INSTITUTIONS

Percentage of
reservation.

3. The State shall provide reservation of seats for education in all the courses of study or faculties in the educational institutions to the Scheduled Castes and Scheduled Tribes at such percentage as may be prescribed by the Government of India, by the concerned State Government or Union Territory, from time to time, proportionate to the population of the Scheduled Castes and Scheduled Tribes in the Union of India or the respective States or union Territory as per the latest census published by the Government of India.

Duty to admit
students of
scheduled
castes and
scheduled
tribes.

4. (1) Every educational institution and those incharge of the educational institution shall admit the students belonging to the Scheduled Castes and the Scheduled Tribes filling the seats reserved in the respective course of study or faculty. The Scheduled Caste/ Scheduled Tribe student securing marks on his own merit with general category candidates, shall not be counted towards percentage of seats reserved for the Scheduled Castes/ Scheduled Tribes. If there is a selection committee for allocation of candidates for admission by the educational institution, the Committee shall not include the merit candidate among the Scheduled Castes/Scheduled Tribes in computing the reserved seats, as per the prescribed percentage. A report in this behalf, within one month from the date of such admission, shall be submitted to the Secretary to Government of India, Social Justice and Empowerment Department Secretary Social/Tribal Welfare Department of the Concerned State Government or Union Territory as the case may be. A copy thereof shall be sent to the Secretary Education Department of the State Government Union Territory or Human Resource Department of Government of India, as the case may be.

(2) Wherever the sufficient members of the Scheduled Castes and the Scheduled Tribes, from the respective quota are not available for admission, it shall be the duty of the admitting authority to admit available candidates from the Scheduled Castes/Scheduled Tribes, vice versa, as the case may be, to the unfilled seats, so as to provide opportunity and to advance the educational opportunity to the disadvantaged Scheduled Castes and Scheduled Tribes.

Clubbing of
single post for
admission.

5. The State shall club single posts in Post-graduate, Specialities, Super-specialities, Ph. D etc., carrying equal scale of pay/similar duties, responsibilities or designations and apply reservation for admission of the Scheduled Castes/Scheduled Tribes category candidate.

6. (1) In case of a child of migrant labour or Government employee of All India Service /Central service/Interstate transfers, liable to be transferred allotted or other employee and belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be, in the native State, but was not a notified Scheduled Castes or Scheduled Tribes in the migrated, transferred or allotted State, shall be eligible to apply for admission and shall be considered for admission as Scheduled Caste or Scheduled Tribe, as the case may be, as if the caste or tribe be deemed to be the Scheduled Caste or Scheduled Tribe, in the appropriate notification issued under Article 341(1) or 342(1) of Scheduled Caste or Scheduled Tribe applicable in the respective State or area of birth or origin.

Eligibility of children of migrant labour etc. for admission.

(2) Scheduled Caste/Scheduled Tribe candidate seeking admission/admitted or his parent/guardian, however, shall obtain social status certificate from the competent officer empowered to issue such certificate, within the jurisdiction of the original native birth place of the parents of the child/ candidate/student.

(3) Pending obtaining social status certificate from the competent officer/authority, if the last date for admission is expiring, an affidavit duly attested by a competent gazetted officer of the State or Central Govt. or Union Territory affirming that the student/candidate or ward belongs to the Scheduled Castes/Scheduled Tribes as notified by the President of India under Article 341(1) or 342(1) or as amended by law as prescribed in the Schedule to this Act shall apply provisionally subject to production of the social status certificate within one month from the date of admission by the candidate.

(4) The admitting authority/competent officer of the educational institution shall send the affidavit and the social status certificate or social status certificate of the admitted student for verification and report by the Director, Social/Tribal Welfare Department of the original native States of origin/birth of the parent/guardian. The Director of Social/Tribal Welfare Department shall, verify or cause verification as per the procedure prescribed in clause 10 of this Act.

7. (1) The Head of the institution, Principal, Head Master/Head Mistress, or any one in charge of the educational institution, at the relevant time, shall strictly implement the reservation in the educational institution, of the candidates belonging to the Scheduled Castes or the Scheduled Tribes and shall ensure full compliance with this Act.

Duty of the Head of the educational institution.

(2) The provision of this Act are in addition to any other rules of reservation for admission in vogue but not inconsistent with the provisions of this Act or rules issued under this Act and the same, shall be followed to the extent of not overlapping with the Act and Rules.

8. In the case of the candidate belonging to the Scheduled Castes or Scheduled Tribes;

Relaxation and Concessions.

(i) if the State has prescribed the age limits under the appropriate rules made under any Act of Rules/Instructions and have force of law for admission in a course of study or faculty, the State may prescribe such relaxed age limit to the members belonging to the Scheduled Castes and the Scheduled Tribes, of not less than five years. The rules, instructions or orders, by whatever name be called, in force or operation, more favourable to the Scheduled Castes and the Scheduled Tribes, shall remain valid and operate unless they are suitably amended by the rules made under this Act to the extent of inconsistent or overlapping rules shall be of no effect.

(ii) The fee prescribed for application form seeking admission in an educational institution, may be exempted or reduced to such extent as may be prescribed under the rules made under this Act. Till then, the existing rules, instructions or orders, by whatever name be called, shall remain valid and operate per force.

(iii) Notwithstanding anything contained any other law, judgement/order/decreed of a court/ competent Tribunal or Authority to the contrary, the requirement as to certain percentage of marks, with reference to the qualifying examination or entrance examination, or both, if combined, for admission, in the appropriate course of study etc., the Government of India/concerned State Government or Union Territory, may so relax, as to ensure filling of all the reserved seats by the Scheduled Castes and Scheduled Tribes. Till then, the rules, instructions or orders, by whatever name called, and in operation, shall remain valid and operate until they are suitably amended under this Act/Rules.

Explanation: Relaxation of marks in favour of Scheduled Castes and Scheduled Tribes students/ candidates shall be only for admission into the course of study or faculty and there shall be no relaxation of marks for qualifying examination for degree etc. It shall be construed accordingly.

(iv) The rules in vogue for payment of travelling allowance for attending interviews for admission, if any, shall remain in operation till new rules are made under the Act.

Laying
provision.

9. Every rule, notification, direction, instruction or orders issued under this Act, shall, as soon as may be, after being issued, be laid before each House of the Parliament and shall receive approval before becoming effective. Equally the concerned State Government shall be entitled to issue such rules or orders/ instructions not inconsistent with the provisions of this Act or rules, instructions or directions issued from time to time by the Government of India or those issued by the concerned State Govt., with prior approval of the Government of India, shall be placed on the floor of each House of the Legislature and shall obtain prior approval before becoming effective in that State.

Eligibility to
file an
affidavit or
certificate
claiming
social status
and procedure
for enquiry.

10. (1) A person claiming reservation for Scheduled Castes or the Scheduled Tribes, may apply for admission in an educational institution on that premise, shall produce the social status certificate in the prescribed form issued by the concerned Government or by a competent officer. If, issue of such certificate is pending before the competent officer and the last date prescribed to submit the application to the educational institution for admission is expiring, the candidate/parent/guardian would be entitled to submit an affidavit in the prescribed form as set out in the Schedule to the Act, duly attested by any gazetted officer of the State that he/she by birth belongs to a Caste or Sub-caste/Tribe or part or group of a Tribe specified in the appropriate notification issued under Article 341(1) or 342(1) as the case may be, and that he/ she continues to be the Scheduled Caste/ the Scheduled Tribe.

Explanation: The word "Hindu" shall be construed as including Sikhs, Buddhists or Jains or professing Hindu religious faith in any form whatever called as specified in Explanation II to Article 25 of the Constitution.

(2) The Head of the educational institution or one in-charge of admission shall admit such reserved category candidate and shall direct the student/parent/guardian to produce the social status certificate in the prescribed form from the competent officer within one month after admission.

(3) After admitting a student of SC/ST category, the Head Master, Head Mistress, Principal or the Head of the educational institution, shall immediately thereafter transmit the affidavit and the original social status certificate, produced together with the admission form to the Director of Social Welfare/ Tribal Welfare Department of the concerned State Government for enquiry and report to the educational institution of the correctness or genuineness of the social status claimed by the concerned admitted candidate.

(4) On receipt of the original social status certificate/ affidavit and the admission form, the Director of Social Welfare/Tribal Welfare Department, himself or by an officer authorised by him or as per the existing procedure, shall verify or cause, verification of the correctness/genuineness of the social status. The procedure in vogue in this behalf

prescribed by the concerned State Government or Union Territory, shall remain in operation. The report as required under sub clause (3) shall be sent to the Head Master, Principal/ Head of the educational institution etc. within two months from the date of the receipt of the letter from the Head Master etc.

(5) In case the report is adverse to the student, the Head Master, Head Mistress, Principal, Director or Head of the institution by whatever name called, shall forthwith issue show-cause notice to the student enclosing a copy of the report received from the Director of Social Welfare/Tribal Welfare Department, calling for an explanation within a specified time of not less than 10 days. On receipt of the explanation, if any, within the specified time or extended time, of not more than 5 days, if the student seeks an opportunity of personal hearing by himself, after giving the same to him shall take appropriate decision thereon within a period of one month, as per rules complying with the principles of natural justice and pass appropriate orders as the case warrants with brief reasons in support of his conclusion. A copy thereof shall be communicated, to the student in person or by registered post with acknowledgement due. A copy thereof, sent to the Director, Social Welfare/Tribal Welfare Department of the concerned State Govt.

Section 6 (6) If the aggrieved student/guardian may file an appeal against the said order to the Secretary to Social Welfare/Tribal Welfare Department of the concerned State Government or Administrator of Union Territory, Secretary to the Government of India, Social Justice and Empowerment, as the case may be, within whose control the educational institution functions. The Secretary shall, after giving an opportunity of being heard in person to the aggrieved student/in case of minor by the parent/legal guardian, shall decide the appeal with brief reasons in support thereof, within two months from the date of filing of the appeal. The decision of the appellate authority shall be final and binding on the student/parent/legal guardian and shall not be questioned in any court of law. The order shall be communicated to the student/guardian and Director, Social/Tribal Welfare Deptt. of the concerned State Govt. by registered post with acknowledgement due. In case the decision is in favour of the student, the same may be questioned by the Director, Social Welfare/ Tribal Welfare Deptt. under Art. 266 of the Constitution of India.

CHAPTER-III

SUPPLEMENTAL PROCEDURE

11. No suit, prosecution or other legal proceedings shall lie against any educational institution or Head Master, Head Mistress, Principal or Head of the institution, etc. for anything done in good faith in implementation of the provisions of this Act or rule or order made or instructions issued thereunder or in operation.

Protection of
the action
taken in good
faith.

12. (1) Every Director of School Education (Secondary Education/Intermediate Board/ Higher Education, etc.) by whatever name called or an officer of the Government of India who has ultimate supervisory jurisdiction over the concerned educational institution shall nominate such number of officer or officers not below the rank of District/Deputy Education Officer to ensure proper implementation of this Act who shall, in particular, be responsible for due, proper and full implementation of this Act and rules made thereunder or existing order, instructions or directions issued by the Government of India, the concerned State Government or Union Territory;

Liaison Officer.

(2) To do such other incidental work as may be necessary for effective implementation of the Act, Rules/Directions or instructions issued under this Act or those issued by the appropriate State Government/Union Territory and in force not inconsistent with the Act and the Rules;

(3) The Principal/Head Master/Director/Head of the educational institution shall submit a report in quadruplicate and return to the State Government, Education Deptt., the Secretary, Government of India, Social Justice and Economic Empowerment; the Secretary, Social Welfare Department/Tribal Deptt. of the State Govt. or Union Territory;

(4) The Government of India/State Government/Union Territory shall cause the annual inspection of the records of the educational institutions in such a manner as may be prescribed or as is in vogue.

Submission of Annual Report and maintenance of other records and inspection thereof.

13. (1) Every educational institution shall maintain such records as may be prescribed and shall furnish in every education year to the Government of India/concerned State Government, Union Territory in such manner and within such time as may be prescribed, an annual report on the admissions of the students/candidates belonging to Scheduled Castes/Scheduled Tribes respectively made in the educational institution or under its control.

(2) It shall be the duty of the Head/Incharge of the educational institution to make available such record of documents in particular of false claim of social status; action taken thereon and the result thereof, shortfall of reserves seats for inspection by the liaison officer or the District Education Officer and furnish such information or arrange such assistance as may be necessary for him to carry out his functions under this Act.

(3) The concerned State Government/Union Territory shall submit periodically, to the Government of India, Social Justice & Economic Empowerment Deptt. and to the Legislature of the State, every year the consolidated report of the students admitted in higher education; false social status claims detected/and/the result of the action taken, the number of unfilled left over seats and those filled with general category candidates, with reasons therefor. The same shall be caused to be laid on the Table of both the Houses of Parliament/Legislature of the State Assembly/Legislation Council, if any, by the respective Secretaries of Social Justice and Economic Empowerment, Govt. of India, Deptt. of Social Welfare/Tribal Welfare of the concerned State Govt./Union Territory.

Penalty for contravention of provisions of the Act.

14. Whoever responsible for implementation of any provision of the Act or Rules/Instructions/Directions issued under the Act/or in vogue, found contravened the same or rules, instructions or directions issued by the concerned State Government/Union Territory or existing one in operation by whatever name called, or fails to implement the same, shall be punishable with imprisonment which may extend upto six months and with fine of not less than rupees three thousand or both. The fine shall be payable from the personal pay of the delinquent officer.

Provided that nothing in this section shall render any person liable to punishment, if he proves that he had made every bona fide endeavour or exercised utmost care, attention and diligence to implement the provision of the Act, rules, instructions or orders issued under the Act or existing rules/instructions.

Penalty for false claims or issue of false social status certificate.

15. (1) Whosoever knowingly makes a false claim that he belongs to Scheduled Caste/Scheduled Tribe, and whoever charged with the responsibility of issuing a social status certificate knowingly issues a false social status certificate, knowingly attests an affidavit, and if proved that the person is not a Scheduled Castes or a Scheduled Tribes, shall be punishable with imprisonment of not less than one year and not more than three years and with fine which may extend to Rs. 10,000/-.

Explanation: The educational institution if it did not accept social status certificate as correct/genuine, prima facie, shall be presumed that the contents of the certificate are false to his knowledge.

(2) Whenever any question arises whether the social status certificate is false to the knowledge of the accused or certificate issuing/attesting officer/authority, the burden of proof that the contents of the affidavit/social status certificate are not false to his knowledge, shall lie on the accused/certificate issuing authority/officer.

(3) The conviction under sub-section (2) of this section shall disqualify the person for any future admission in any other educational institution or appointment in any establishment under the Government of India or State Government, Union Territory, local body with status as Scheduled Castes/Scheduled Tribes. The accused shall not be eligible to contest an elective office like a Member of, the Parliament, the Legislature, Local Bodies/authority, like Nagarpalika, Zilla Parishads, Gram Panchayat, etc.

(4) The notification issued by the President of India under Article 341(1) or 342(1) or as amended by Scheduled Castes and Scheduled Tribes List Amendment Act, 1976 of the social status of the caste or sub-caste/tribe shall be conclusive proof of the caste/sub-caste/tribe/part of the tribe.

(5) No court, shall have jurisdiction, de horses the Presidential Notification/Act, 1976 to declare that the plaintiff is a member of a caste or sub-caste or tribe/part of a tribe, as the case may be and to grant declaration of such social status.

(6) Representation of the People Act and Local Bodies Acts etc. shall be deemed to have been amended incorporating the disqualification in Clause (5) as a disqualification therein unless it is suitably amended or till then.

16. (1) No prosecution for an offence under this Act shall be maintained against an officer except by, or with sanction of, the Government of India, the concerned State Government or the Union and Territory Government/Administrator. The Govt. shall consult the National Commission for Scheduled Castes and Scheduled Tribes before grant of sanction u/s 197 Cr.P.C. and the advice tendered by it shall be binding on the Government.

Cognizance of the offence courts.

(2) No court shall take cognizance of an offence punishable under Section 15(1) save on a complaint by the aggrieved person or on a report by a competent Police Officer or except as provided under sub-section (1).

(3) No court, inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence punishable under this Act.

(4) The offence under the Act shall be cognizable and non-bailable.

17. (1) Every educational institution shall be bound by the Act, Rules or Instructions by whatever name called issued under this Act or existing rules, etc., no contrary to or inconsistent with the provisions of this Act or as the Government of India may, by general or special order, in writing from time to time notifies/issues to give effect to the provision of this Act.

Power of Govt. of India to give directions.

(2) The Government of India shall lay on the table of both Houses of Parliament such rules, instructions or directions and obtain approval thereof.

18. All rules, directions and orders, statutory or non-statutory, issued by the Government of India or the concerned State Government or the Union Territory or Local Body regulating the implementation of the reservation of seats for admission in the educational institutions under its control/dispensation (including relaxation, concession, etc.) issued to safeguard the interests of the Scheduled Castes and the Scheduled Tribes, before the commencement of this Act and not inconsistent with the provision of this Act, shall continue to be in force, unless withdrawn superseded or suitably amended.

Effect and extent of the operation of existing rules.

19. Notwithstanding anything inconsistent therewith contained in any other law, order, judgement or decree of any court, tribunal or authority for the time being in force. The provisions of this Act shall have effect, in addition to and not in derogation of or in any instrument having effect by virtue of any law.

Act to have over-riding effect.

20. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government of India may, by order to be published in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing any difficulty in the implementation of the provisions of the Act or rules.

Removal of difficulties.

(2) Every rule, instruction/direction/order made under sub-section shall soon after it is made, be laid before each House of Parliament.

21. The Government of India shall, once in every year, lay before each House of Parliament, a report giving full account of the implementation of the Act during the preceding year.

Annual statement to be laid on floor of Parliament.

Power to make rules.

22. (1) The Government of India may, by a notification, make rules for carrying out the provisions of this Act and published in Gazette of India.

(2) In particular, and without prejudice to the generality of the foregoing, such rules as may provide for all or any of the following matters, namely,—

(a) The percentage of seats reserved for admission in an educational institution for the Scheduled Castes and the Scheduled Tribes under sub-section (1) of Section 4 consistent with the percentage of population in the latest census in operation.

(b) Guidelines for identifying educational institutions which are not already covered under Section 2(c) for inclusion therein.

(c) Relaxation of upper age limit or percentage of qualifying marks for admission into educational institutions/courses of study or faculty in wherever reservation for admission is made.

(d) Exemption from payment of application fee or relaxation thereof.

(e) Authority to give relaxation in this behalf or to authorise under the Act.

(f) Authority to determine the travelling allowance payable, if any, attending the interview, to the candidates belonging to Scheduled Castes and Scheduled Tribes before to the educational institutions.

(g) Rank of the officer to be nominated as a liaison officer or inspection officer.

(h) Forms prescribed for maintaining the particulars relating to the implementation of the Act by the educational institutions. Till then the educational institutions shall state the number of the Scheduled Castes and Scheduled Tribes students admitted, the claims of social status found to be false, the result thereof. Reasons for admission, if any, made of a general candidate in a reserved seat.

(i) The authority to sanction prosecution against the officer or officers that contravened the provisions of the Act.

(j) Any other matter which is required to be or may be prescribed.

(k) The procedure for inquiry by the educational institutions or appellate authority against false claim of social status. Until then the educational institution or the appellate authority shall follow the principle of natural justice, namely, issue show-cause notice, supply the report of the Director, Social Welfare/Scheduled Castes/Scheduled Tribes Deptt., as the case may be, copies of any other material sought to be used against the student and an opportunity of hearing in person to the aggrieved student/parent/guardian and brief reasoned order in support of the conclusion whether or not the charge of the false claim has been established and its result; immediate communication of the order to the concerned student in person to obtain signature in his own hand acknowledging the receipt of the order, in case of avoiding, by registered post with Acknowledgement Due to the known address mentioned in the application for admission/residential hostel and a copy to the Director of Social/Tribunal/Welfare of the appropriate Govt.

(l) Such other rules, instructions, orders or directions to give full effect to the Act.

(3) Every rule etc., made under this Act shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both houses agree in making any modification in the rules, etc., or both Houses agree that the rules, etc, should not be made, the rules, etc. shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, that any such modification or annulment shall be without prejudice to the validity of anything previously done under this Act/rules/or existing rules/instructions/directions in operation.

SCHEDULE

AFFIDAVIT

I _____ S/D/o _____ of
 Village/Town _____ within the jurisdiction of _____
 Police Station in _____ Taluk/Mandal _____ in the
 District/Division _____ of the State/Union Territory _____
 _____ belong to _____ Community/Caste/Tribe by birth and continue
 to be a Scheduled Caste/Scheduled Tribe which is recognised in item No. _____
 — as Scheduled Caste/Scheduled Tribe under the Constitution (Scheduled Caste/Scheduled
 Tribe) Order, 1950 or as amended from time to time by the Scheduled Caste/Scheduled
 Tribe List Modification Order, 1956, the Bombay Reorganisation Act, 1960, The Punjab
 Reorganisation, 1966, The State of Himachal Pradesh Act, 1970, The North-Eastern Areas
 (Reorganisation), 1971 and the Scheduled Caste/Scheduled Tribe Order Amendment Act,
 1976 of the Scheduled Caste/Scheduled Tribe Amendment Order _____ I _____
 _____ S/D/o _____ further state that
 myself and my parents ordinarily/normally reside in the said Village/Town and within the
 jurisdiction of _____ Police Station in _____
 Taluk/Mandal _____ in the District/Division _____
 — of the State/Union Territory. I further solemnly verify and state that the facts stated
 above are true and correct to the best of my knowledge and belief and no part of the
 statement is incorrect and false.

Signature

Attested by Gazetted Officer

Note: In case the candidate is son/daughter of a migrant labour/transferee, it should further
 be stated in the affidavit of the date of migration/transfer and the duration of stay in
 the migrated/ transferred State in which the Caste/Tribe was not recognised as
 Scheduled Caste/Scheduled Tribe.

The following are eligible to attest the affidavit:

- (1) District Magistrate/Additional District Magistrate/Collector, Deputy Commissioner/
 Additional Deputy Commissioner/Deputy Collector/1st Class Stipendary Magistrate/
 Sub Divisional Magistrate/Taluka Magistrate/Executive Magistrate/Extra Assistant
 Commissioner.
- (2) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency
 Magistrate.
- (3) Revenue Officer not below the rank of Tehsildar and
- (4) Sub-Divisional Officer/Mandal, Revenue/Development Officer of the area where the
 candidate and/or his family normally resides.

Signed by

THE STATEMENT OF OBJECTS AND REASONS

The preamble of the Constitution assures equality of opportunity and of status, socio-economic justice to all the citizens of India, and due to practice of untouchability on the Scheduled Castes and Scheduled Tribes living in the inaccessible scheduled areas have been denied education and opportunity to higher education is lacking due to poverty and illiteracy.

Article 46 of the Constitution imposes a duty on the State to promote with special care the educational interest, in particular of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice.

Article 38 mandates the State that it shall strive to promote the welfare of the people by securing and protecting effective social order rendering socio-economic and political justice and shall inform all the instructions of national life and to endeavor to eliminate inequalities in status, facilities and opportunities among individuals as well as groups of people of India.

Article 51A(j) imposes fundamental duty on every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation consistently rises to higher levels of endeavor and achievement.

Article 15(4) of the Constitution, notwithstanding Articles 15(1) and 14, empowers the State to make special provision for the social and educational advancement of the Scheduled Castes and Scheduled Tribes.

It has been the policy of the Govt. of India and the State Govt. to provide, in implementation of the aforesaid Constitutional mandates, reservation in admissions in all educational institutions in all the courses of study, faculties and disciplines to the Scheduled Castes and the Scheduled Tribes not only in humanities but in engineering, technical, medical, post-graduation, M.Phil, Ph.D., super-specialities and technical courses of study as well so that the every Scheduled Caste and Scheduled Tribe educated youths have opportunity to improve intellectual, excellence and secure equality of status and dignity in the society. In *Indersawhani* case, the Supreme Court opined that reservation in technical, super-specialities and other advanced and specialised courses of study shall not be made for the Scheduled Castes and Scheduled Tribes and in *Dr. Preeti Srivastava's* case, the Supreme Court held that reservation in super-specialities in medical courses of study is not in the national interest and cannot be made and it directed the Medical Council of India to consider whether reservation for admission in post-graduation course of study would be provided to the Scheduled Castes and the Scheduled Tribes and also in post-graduation centre in *Chandigarh* case, five Judges Bench of the Supreme Court held that clubbing of the single posts in post-graduation or in super-specialities is illegal. It was also held that relaxation of marks with disparity of 10 marks between general and reserved candidates for admission of Scheduled Castes and Scheduled Tribes to the extent of reserved seats as illegal.

The aforesaid judgements defeat the very object of the reservation policy, purpose and constitutional animation and deny opportunity to the Scheduled Castes and Scheduled Tribes of education and deprive them to strive towards intellectual excellence in all spheres of their educational activities and to improve their cultural advancement.

With a view to effectively implementing the policy of reservation to the Scheduled Castes and the Scheduled Tribes in admission to the seats at the prescribed percentage in all courses of study and in all faculties, disciplines, professional courses etc. and to relieve the hardship to the Scheduled Castes and Scheduled Tribes from the afore-mentioned Judgements, the Constitution is being proposed to be amended through this Bill.

R. S. GAVAI

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for exemption of payment of fees for application form for seeking admission in an educational institution for Scheduled Castes and Scheduled Tribes candidates. However the exact amount of expenditure cannot be calculated, the Bill if enacted would involve expenditure of rupees ten lakh per annum from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 17 of the Bill provides that the Central Government may make rules for carrying out the purposes of this Act. The rules will relate to matters of detail only.

The delegation of legislature power is therefore of normal character.

VIII

BILL NO. XLIV OF 2000

A Bill further to amend the Constitution of India

BE it enacted by the Parliament in the fifty first Year of the Republic of India as follows:—

1. (1) this Act may be called the Constitution (Amendment) Act, 2000.

Short title
and Com-
mencement.

(2) It shall be deemed to have come into force on the 17th June, 1995.

2. After clause (2) of article 15 of the constitution, the following clause shall be inserted namely:—

Amendment of
article 15.

(2A) Notwithstanding any other provision in this constitution to the contrary, any Judgement, decree, order or direction of any Court of law or Tribunal to the contrary, and subject to the law that may be made by Parliament in this behalf specifying the qualifications and eligibility including the percentage of reservation, relaxation to ensure filling up all seats and clubbing of single posts, the Scheduled Castes and Scheduled Tribes citizens shall be entitled for reservation in all courses of study including advanced courses of study, professional courses in all categories or disciplines to advance their social status, to provide educational opportunities and for their intellectual excellence.

Amendment of
article 16.

3. (i) After clause 2, the following clauses shall be inserted namely:—

(2A) Notwithstanding anything in this Constitution, judgment, decree, order or direction of any court of law or Tribunal to the contrary, the Scheduled Castes and Scheduled Tribes citizens shall be entitled for reservation in matters of appointment, promotion or upgradation to any post or classes of posts in the services under the State in accordance with any law, rules made under the proviso to article 309 or order which shall specify the qualification, eligibility and percentage of reservation.

(2B) A citizen belonging to the Scheduled Castes or Scheduled Tribes promoted to any post shall be entitled to count his seniority in that post from the date of such promotion.

(2C) Notwithstanding any Judgment, decree, order or direction of any Court of law or Tribunal to the contrary, the State shall make provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation for reservation in matters of recruitment and promotion to any post or classes of posts or service in connection with the affairs of the Union or of a State.

(2D) Notwithstanding anything in this Constitution, any Judgement, decree, direction or order of any court of law or Tribunal to the contrary, the State shall club single posts carrying equal scale of pay or duties or responsibilities and provide reservation to the Scheduled Castes and Scheduled Tribes accordingly.

(2E) Notwithstanding anything in the Constitution, the State, shall by law provide reservation to the members of the Scheduled Castes and Scheduled Tribes in Private Sector, subject to such conditions as may be specified in the Act made in this behalf.

(2F) Notwithstanding anything in any Judgement, decree, order or direction of a Court of law or Tribunal or Authority to the contrary, the prohibition that there shall be no reservation for more than 50% of the posts/vacancies in a recruitment year shall not apply to any recruitment/promotion or special recruitment drive to fill the backlog vacancies/posts for appointment/promotion/appointment by transfer/upgradation, in a service under any establishment.

(ii) Clause (4A) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Preamble of the Constitution assures every citizen equality of status and of opportunity and secures justice—social and economic which has been declared in S.R. Bommai's case as basic structure of the Constitution.

Article 46 enjoins that the State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice;

Article 38 directs the State to secure social order for promotion of the welfare of the people by securing and protecting an effective social order in which social, economic and political justice shall inform all the institutions of national life and that the State, in particular, shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities among individuals as well as groups of the people;

Article 51-A(h) imposes fundamental duty on every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; even then the Scheduled Castes and the Scheduled Tribes are the most disadvantaged and deprived weaker sections of the society;

The Constitution laid special emphasis and duty of the State to take care of them to minimise the inequalities in status, facilities and opportunities;

It is the fundamental duty of the State to effectively implement the above directives in the Constitution to enable the Scheduled Castes and the Scheduled Tribes to reap social and economic justice, secure equality of opportunity and of status and to enjoy dignity of the person.

After the State adopted open economy, to increase the chances/avenues of appointment/promotion in Public Sector to the Scheduled Castes/Scheduled Tribes it is necessary to make an express provision in the Constitution and a separate Act in that behalf.

With a view to effectively implementing the above directives and to achieve the above objects, reservation in education and public services etc. as guaranteed in Articles 15, Article 29(2) and 16, are the two public policy programmes being implemented from the beginning of the Independence (August 15, 1947) and, in particular, after the Constitution came into force (26th January, 1950) as Constitutional duties.

Even after implementing the reservations since 50 years of the Constitution came into force, the Scheduled Castes/Scheduled Tribes do not have proper representation for variegated reasons in various posts or classes of post or in the services under the State or appointed in connection with the affairs of the Union of India and due to social, educational and economic backwardness and other disadvantages and disabilities, the Scheduled Castes and the Scheduled Tribes are not able to compete on equal merit with the general category candidates;

The recent judgements of the Supreme Court in *Inder Sawheny versus Union of India* 1992 Supplement 3 SCC 217, *Dr. Preeti Srivastava versus State of Madhya Pradesh* 1999 7 SCC (page 120), and *Ajit Singh & Others (II) versus State of Punjab* IA 1-3 in Civil Appeal No. 3782-94 of 1999 etc. dated September 16, 1999 caused hindrance for the Government for effectively implementing the policy of reservation in imparting of education in all courses of study, in particular, at the stage of higher learning, specialities, super-specialities, technical, scientific courses, etc. and reservation in the posts/classes of

posts in the services under the State or in the affairs of the State in particular at promotions and consequential seniority and in the Private Sector etc.

Therefore, with a view to give effect to the Constitutional objectives referred to above, duty of the State in that behalf, and to suitably remedy the defect pointed out by the judgements in the reservation policies, this Bill proposes to suitably amend the Constitution for the said purpose.

R.S. GAVAI

IX

BILL No. XL OF 2000

A Bill to provide for compulsory desiltation of Dams and Rivers by the State and matters connected therewith.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Compulsory Desiltation of Dams and Rivers Act, 2000.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force with immediate effect.

2. In this Act unless the context otherwise requires,—

Definitions.

(a) “Dam” means a barrier constructed over a river to hold back its water to form a reservoir for preventing floods and other purposes;

(b) “river” includes any stream, canal, creek or other channels whether they are natural or artificial;

(c) "desiltation" means removing of sediments of rocks and clay deposited by flowing water in a river or dam.

(d) "prescribed" means prescribed by rules made under this Act.

National plan for desiltation of dams and rivers.

3. The Central Government shall formulate a National Plan for desiltation of dams and inter state rivers of the country, from time to time, as a measure towards combating floods.

Compulsory desiltation of dams and rivers.

4. Every State and Union Territory Government shall carry out Compulsory desiltation of dams located and rivers flowing through its territory during the lean periods of the years after demarcating a definite part thereof within a time frame under the direct supervision of the Central Water Commission.

Central Government to provide machinery and knowhow.

5. The Central Government shall provide to the State Government necessary machinery for desiltation of dams and rivers therein and shall also provide intensive training to the personnel engaged in the desiltation operations in such State.

Financial assistance not to be given in certain cases.

6. Every State Government which does not accomplish the desiltation work prescribed under Section 4 of this Act shall not be given any financial assistance from the natural calamities fund if it is affected by flood water of the river which was not desilted by the concerned State Government.

Indemnity not to be given to erring officials.

7. (1) Every supervisory official entrusted with the work of desiltation of a dam or a river within the prescribed time frame, shall not be covered by indemnity if he does not complete the work within the time frame or does not even start the work and legal proceedings shall lie against him for negligence.

(2) If the offence of negligence is proved against such officer he shall be dismissed forthwith without giving him any future benefits whatsoever.

Central Government to undertake desiltation of Ports.

8. The Central Government shall undertake the desiltation of all the Ports which are directly under its charge within a time frame.

Power to make rules.

9. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Sedimentation of rivers, dams, ports and seas is a natural process. The flowing waters of rivers continuously bring particles of rocks and clay while flowing from one place to other and layers of silt continues to be deposited at the bottom of the river, dam, port and sea which continues to raise their bottom levels in natural ways. When the silt hardens it raises the bottom but reduces the depth of the river, dam, port or sea. When the depth is reduced the river, dam, port or sea cannot carry extra water in them and the water level is raised to such an extent that water crosses their banks and starts flowing outside. Thus sedimentation or siltation of rivers is one of the main causes of floods in our country as the silt raises the bottom level of the rivers. If desiltation is carried out regularly floods can be contained to a great extent. At present a number of multi-purpose Dams are full with silt which is adversely affecting the power generation in the country.

It is a matter of serious concern that the Central as well as several State Governments have imported desiltation machinery and equipments from abroad or have also purchased them from domestic market but they are not using them at all. Either the irrigation departments do not have trained personnel for operating these machines or equipments or they deliberately do not use these equipments for desilting because floods give them rich dividends in the form of disbursing assistance to the affected ones. As a result these machines become junk in the course of time and the exchequer suffers heavy losses in both the ways. If desiltation is made compulsory and protection of indemnity is taken away from the responsible authorities, losses to the nation can be prevented both from the floods and turning the equipments into junk. At the same time those States who do not get the desiltation done within a time frame should not be given any assistance for combating floods. It will have a good effect on the negligent States.

Hence this Bill.

S. S. AHLUWALIA

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for compulsory desiltation of rivers and dams. Clause 5 provides that the Central Government shall provide machinery and knowhow for desiltation. Clause 8 provides that Central Government shall undertake desiltation of major ports. If enacted, the Bill will involve expenditure from the Consolidated Fund of India. It is expected that a sum of rupees one hundred crores is likely to be incurred as recurring expenditure per annum from the Consolidated Fund of India.

A non recurring expenditure of rupees fifty lakhs per annum is also likely to be incurred.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The Rules will relate to matters of details only. The delegation of legislative power is of normal character.

X

BILL NO. XLI OF 2000

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

Short title and
commence-
ment.

1. (1) This Act may be called the Constitution (Amendment) Act, 2000.

(2) It shall come into force at once.

Amendment of
article 124.

2. In article 124 of the Constitution, to clause (1) the following proviso shall be added, namely:—

“Provided that the President shall, within a period of two years from the commencement of the Constitution (Amendment) Act, 2000, set up as many Benches of the Supreme Court and at such places in the country, as the President deem necessary for providing timely justice to the citizens, and for reducing the arrears of cases pending before that Court.”

Amendment of
article 214.

3. To article 214 of the Constitution the following proviso shall be added at the end, namely:—

“Provided that the President shall, within a period of two years from the commencement of the Constitution (Amendment) Act, 2000 set up benches and additional benches of High Court in each State keeping in view the area and population of each State and the cases pending in the High Court of such State.”

STATEMENT OF OBJECTS AND REASONS

Ours is the largest democracy in the world and wedded to the ideals of a welfare State. In the Preamble to the Constitution the people of the country have resolved to secure to all citizens justice,—social, economic and political. Thus the Constitution and various other laws protect the citizen's fundamental and other rights and also the right to seek legal redress to achieve the goals of a welfare State. However despite the laudable goals set out in the Constitution the arrears of cases pending before the Supreme Court and various High Courts are enormous.

Similar is the case with the lower courts. Millions of cases are lingering for years together therein. The citizens have to wait for years together, in some cases decades to get justice. It is said that "Justice delayed is justice denied". If this is true then in our country Justice is denied in almost every case because delayed Justice is routine in every case. Thus the arrears of cases in the courts and time consuming litigation is all set to defeat the ideals of welfare State in our country.

In such a grave situation in the judicial front and considering the vastness of the country, the poverty of its people, the high cost of litigation it is the need of the hour to consider measures to provide easy, quick, cheap and timely justice to the people. This is all the more important with regard to the people living in far flung rural areas who are away from the national and State capitals where Supreme Court and High Courts are located. This factor obviously denies the poor man to seek legal redress particularly in the Supreme Court and High Courts which involves considerable expenses and inconvenience. The agonies of a litigant travelling right from Madras, Thiruvananthapuram, Goa, Pondicherry or North Eastern part of the country to New Delhi to attend a case at Supreme Court can be imagined when he finds that his case only has been adjourned for the next date. He does not get justice even after travelling for days together spending lot of money, wasting lot of time, incurring losses if he runs a business establishment and loses his crops if he is a farmer even if he is affluent one. In some cases the litigation is prolonged to generations together.

Thus to mitigate the sufferings of poor litigant citizens it is felt that benches of the Supreme Court should be established at various places in the country particularly in the Eastern, North Eastern, Western and Southern parts of the country. Similarly more benches of High Courts should be established at easily accessible places. Such a step will certainly reduce the ever increasing number of pending cases in the Supreme Court and High Courts. It would also break the monopoly of expensive advocates of the Supreme Court and High Courts. It will be a step in the right direction to provide easy, quick, cheap and timely justice to the people and to achieve the goals of Welfare State.

Hence this Bill.

S. S. AHLUWALIA

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for setting up benches of Supreme Court, Clause 3 provides for setting up benches of High Courts in the States. In that case more judges have to be appointed which will incur expenditure from the Consolidated Fund of India. It is estimated that an annual recurring expenditure of about rupees two crores is likely to be incurred from the Consolidated Fund of India.

A non-recurring expenditure of rupees three crores is also likely to be involved.

XI

BILL No. XLVI OF 2000

A Bill to provide for the payment of old age allowance to the farmers by the Central and State Governments who are unable to maintain themselves during the old age and for matters connected therewith and incidental thereto.

BE it enacted by the Parliament in the Fifty-first year of the Republic of India as follows:—

1. (1) This Act may be called the Farmers (Old Age Allowance) Act, 2000.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) “appropriate Government” means in the case of a State, the Government of that State and in other cases, the Central Government.

(b) “farmer” includes the spouse of a farmer;

(c) “old age” means where the farmer has attained the age of sixty years or more;

(d) “prescribed” means prescribed by rules made unless this Act.

Appropriate Government to pay old age allowance to farmers.

3. (1) The appropriate Government shall, on an application made in the prescribed form, pay old age allowance to every farmer at the rate of rupees one thousand per mensem from the date of commencement of this Act.

(2) The allowance payable under sub-section (1) shall be subject to alteration on the basis of prevailing price index as may be determined by the Central Government in consultation with the Governments of the States from time to time.

(3) The old age allowance payable under this Act shall be paid to the farmers by the appropriate Government in such manner as may be prescribed.

(4) Every farmer who is eligible for old age allowance under this Act but who is in receipt of pension from the appropriate Government other than the prescribed under this Act or having adequate source of income shall forfeit his right to claim old age allowance under this Act.

Central Government to provide funds.

4. The Central Government shall, after due appropriation made by law by Parliament in this behalf, provide adequate funds at the disposal of States and Union Territories to meet the expenditure incurred by them for the purposes of this Act.

Annual reports.

5. (1) Every State Government and Union Territory Administration, after the end of every financial year, as soon as may be, submit a status report about the implementation of this Act within its territorial jurisdiction to the Central Government in such manner as may be prescribed.

(2) The Central Government shall cause the reports received under sub-section (1) along with its action taken report laid before each House of Parliament.

Savings.

6. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force in any part of the country.

Power to make rules.

7. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

There are crores of old farmers in the country and their number is increasing due to increase in the life expectancy of the people. Although the children of the farmers particularly their sons are expected to look after them in their old age and many of them in fact do so but in many cases the economic condition of the children is such that it is not possible for them to support the old parents. As a result the old farmers and their spouses at the fag end of their lives have to fend for themselves and are forced to lead a miserable life. It is so because they do not have a permanent source of income or they suffer from chronic ailment or infirmity. They live in hunger and are left uncared for. Being a welfare State, the Government is bound to provide social security to the farmers who produce foodgrains for the nation. Though some State Governments are giving old age pension to old persons including farmers but that is very meagre. It is felt that at least one thousand rupee be given as old age allowance to the farmers to enable them to maintain their living. This allowance should be revised with the rise in the price index. The Central Government has to bear the cost of implementation of the Bill since the financial condition of the States can not bear this burden.

Hence this Bill.

SOLIPETA RAMACHANDRA REDDY.

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides that the Central Government shall provide funds for the implementation of the Bill. The Bill if enacted will involve expenditure from the consolidated Fund of India to the tune of one thousand crore rupee per annum as recurring expenditure.

No non recurring expenditure is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

XII**BILL NO. L OF 2000**

A Bill to provide for measures and methods for the control of population and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Population Control Act, 2000.
- (2) It extends to the whole India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
extent and
commence-
ment.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) “appropriate Government” means in the case of a State, the Government of that State and in other cases, the Central Government;

(b) “dispensary” includes every dispensary including clinic run by the appropriate Government or any local authority or cooperative society, social organizations, societies who engage qualified medical personnel;

(c) “hospital” includes every hospital whether run by appropriate Government or by any local authority, or with the aid or grant of such Government or local authority or Medical Colleges providing medical services;

(d) "local Authority" means all the Municipal Corporations, Municipal Councils, Committees, Zila Parishads, Blocks, Panchayats etc. or any other authority as established by law;

(e) "prescribed" means prescribed by the rules made under this Act.

Two Children norms.

3. No person shall procreate more than two living children after a period of one year from the date of the commencement of this Act.

Disincentives for not adopting small family norms.

4. (1) Every person and his spouse who having two living children, after a period of one year from the date of the commencement of this Act procreates children, such person shall,—

(a) Notwithstanding anything contained in the election laws not be eligible to contest election to the Parliament/State Legislatures or local authorities in case procreation takes place after election, he/she will stand disqualified;

(b) not be allotted any house under any housing scheme launched either by the appropriate Government or any local authority or any public sector financial institution or Housing Board or authority etc.;

(c) not be entitled to become a member of any society under the Cooperative Societies Act, 1912 for the purpose of allotment of a house or a plot or a piece of land for construction of a house;

(d) not be entitled to avail of any loan or facility of any kind from the Banks, Financial Corporations or other Financial Institutions under the control of appropriate Government;

(e) not be entitled for ration card or to draw ration, subsidised kerosene oil or any item from any Fair Price Shop under the Public Distribution System and shall also not be entitled to be beneficiary of any Government subsidy in any form in any sector;

(f) not be eligible for appointment in any Government establishment/office or public sector undertaking or an autonomous body owned or controlled by the Government or any local authority;

(2) Employment in Government, Public Sector, Autonomous Body and local authority, establishments on relaxed or concessional conditions will be restricted to first two children only.

Government to frame schemes.

5. The Central Government may or State Government may with the approval of the Central Government, frame schemes for the purpose of further providing or regulating:—

(a) facilities to be provided by Government and Private Hospitals and Dispensaries for assisting in restricting procreation to two children per couple;

(b) procedure for maintaining record of the number of children procreated by a couple;

(c) incentives and rewards to couple who do not exceed two children, in the form of cash rewards, preference/concession in educational institutions at school and University levels including medical and Technical Institutions;

(d) placing reasonable restrictions on couples or their children in matters of Government employment and concessional facilities with regard to cases where a couple has more than two children;

(e) Involvement of media, NGOs, women's organisations and panchayat institutions so as to reach the poor, disadvantaged or other socially deprived or underprivileged groups;

(f) easy access to condoms, pills and other birth control devices in panchayat offices, rural post offices and through health and rural development workers.

6. (1) No employee of the appropriate Government or of a public sector undertaking under the control of such Government or autonomous body or any of a local authority shall be entitled to any increment or promotion in service if after the commencement of this Act, he procreates after two living children.

Special provisions for Government employees.

(2) LTC facilities to employees of appropriate Government or PSUs or autonomous bodies or local authorities shall be restricted to first two children.

(3) If any employee or spouse of the appropriate Government or public sector undertaking or autonomous body or any local authority undergoes an operation for birth control after having two living children, he shall be entitled to incentive equivalent to his one month's basic salary and preference in promotion.

7. The provisions of this Act shall not apply to those having more than two living children on the date of the commencement of this Act or having not more than two children after a period of one year from the date of commencement of this Act.

Exemption.

8. The Central Government shall, after due appropriation made by law by Parliament, provide adequate funds for the implementation of this Act.

Central Government to provide funds for the implementation of the Act.

9. The appropriate Government may, by notification in the official gazette, make rules for carrying out the provisions of this Act, and of schemes under this Act.

Power to make rules.

STATEMENT OF OBJECTS AND REASONS

Rate of population growth in the country has assumed alarming proportion. During the last five decades, the population of the country has increased by 3 times. India's population was 33 crores only in 1951 when India attained independence; it is over one hundred crore today. The average increase is over 1.5 crore per year.

This tremendous increase in population offsets all benefits of development that take place in the country. Therefore elementary essential services and basic facilities have not been provided to all the people residing in the country.

Crores of people are living in sub-human conditions in slums and most of them are seen defecating in the open. This abhorrible practice is leading to insanitary conditions which are the source of spreading bacteria and breeding germs adversely affecting the health and well-being of the people residing in the neighbourhood. Standard of living is reciprocal. Even if one is leading a very protected life, but if neighbourhood is dirty, he is bound to fall ill. That is so because germs are no respecter of the status of the person whom they attack.

The problem of the increasing population adds to the problem of unemployment. The number of the unemployed in the country as registered in the employment exchanges are overwhelming; out of whom many lakhs are graduates. The number of the unemployed must be more on two counts. Firstly, not all the unemployed get themselves registered; and secondly, only persons upto the age of 25 years are registered in the employment exchanges as after that age, they are not eligible for government services. Moreover the crimes in the country particularly related to robberies and extortions, are increasing because the young employed are desperately in need of money to feed themselves.

Merely making people self-conscious about the need to have a small family has not produced the desired results of restricting the population growth. Hence, it has become imperative that a scheme of incentives and disincentives should be formulated in the form of an Act. This could help in restricting the population growth. Needless to emphasize that if the population is not controlled, the country is doomed to disaster. And if the population keeps on increasing, most metropolitan and big cities would become unliveable with multitudes of men and women moving about as if there were big railway platforms.

The unprecedented increase in population has made most cities run in two directions; authorized and unauthorized constructions because there is acute shortage of dwelling units. The result is that like the bad penny driving out the good penny, the unauthorized constructions are overtaking the authorized ones. This process has made the people anti-planning and even green areas are becoming a concrete jungle of haphazard and ugly growth. Unauthorized constructions have also led to corruption at all levels.

The Bill seeks to provide for different measures and methods for population control.

RAJIV SHUKLA

FINANCIAL MEMORANDUM

Clause 8 provides that Government shall provide funds to the genuine NGOs to work in rural areas for family planning. The Bill if enacted will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees ten crores may involve as recurring expenditure per annum.

No non-recurring expenditure will involve as all the measures suggested are of administrative nature and they are a part of the existing Governmental apparatus. Further the reward suggested for sterilization and giving Nirodh to men and Mala to women (Both contraceptives) free of cost are already a part of Government of India's family welfare programme.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill empowers the Central Government to make rules for carrying out the provisions of the Bill. As the rules to be made will relate to matters of details only, the delegation of legislative power is of a normal character.

R. C. TRIPATHI,
Secretary-General.